

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 194 & 189
92ND GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, February 10, 2003, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Senate Committee Substitute adopted February 19, 2003.

Taken up February 19, 2003. Read 3rd time and placed upon its final passage; bill passed.

0684S.02P

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 288, RSMo, by adding thereto one new section relating to unemployment reimbursement for Indian tribes in compliance with federal mandate, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 288, RSMo, is amended by adding thereto one new section, to be known as section 288.037, to read as follows:

288.037. 1. The term "employer" shall include any Indian tribe for which service in employment as defined in section 288.034 is performed.

2. The term "employment" shall include service performed in the employ of an Indian tribe, as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), provided such service is excluded from "employment" as defined in FUTA solely by reason of Section 3306(c)(7), FUTA, and is not otherwise excluded from "employment" under this chapter. For purposes of this section, the exclusions from employment in subsection 9 of section 288.034 shall be applicable to services performed in the employ of an Indian tribe.

3. Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter. The provisions of subsection 3 of section 288.040 pertaining to services performed at an educational institution while in the employ of an "educational service agency" shall apply to services performed in an educational institution or educational service

agency wholly owned and operated by an Indian tribe or tribal unit.

4. (1) Indian tribes or tribal units, including subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to this chapter shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe. An Indian tribe and all tribal units of such Indian tribe shall be jointly and severally liable for any and all contributions, payments in lieu of contributions, interest, penalties, and surcharges owed by the Indian tribe and all tribal units of such Indian tribe.

(2) Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in subsection 3 of section 288.090 pertaining to state and local governments and nonprofit organizations subject to this chapter. Indian tribes will determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. Termination of an Indian tribe's coverage pursuant to subdivision (5) of this subsection shall terminate the election of such Indian tribe and any tribal units of such Indian tribe to make payments in lieu of contributions.

(3) Indian tribes or tribal units will be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(4) Any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required, prior to the effective date of its election, to post with the division a surety bond issued by a corporate surety authorized to do business in Missouri in an amount equivalent to the contributions or payments in lieu of contributions for which the Indian tribe or tribal unit was liable in the last calendar year in which it accrued contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever amount is the greater, to ensure prompt payment of contributions or payments in lieu of contributions, interest, penalties, and surcharges for which the Indian tribe or tribal unit may be, or becomes, jointly and severally liable pursuant to this chapter.

(5) Failure of the Indian tribe or tribal unit to maintain the required surety bond, including the posting of an additional surety bond or a replacement surety bond within ninety days of being directed by the division, will cause services performed for such Indian tribe to not be treated as "employment" for purposes of subsection 2 of this section.

(6) The director may determine that any Indian tribe that loses coverage under subdivision (5) of this subsection, may have services performed for such tribe again included as "employment" for purposes of subsection 2 of this section if all contributions, payments in lieu of contributions, penalties, surcharges, and interest have been paid. Upon reinstatement of coverage under this subdivision, an Indian tribe or any tribal unit may elect, in accordance with the provisions of this subsection, to make payments in lieu of contributions.

(7) If an Indian tribe fails to maintain the required surety bond by posting an additional surety bond or a replacement surety bond within ninety days of being directed by the division, the director will immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(8) Notices of surety bond deficiency to Indian tribes or their tribal units shall include information that failure to post an additional surety bond or a replacement surety bond within the prescribed time frame:

(a) Will cause the Indian tribe to be liable for taxes under FUTA;

(b) Will cause the Indian tribe to be excepted from the definition of "employer", as provided in subsection 1 of this section, and services in the employ of the Indian tribe, as provided in subsection 2 of this section, to be excepted from "employment".

5. (1) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause services performed for such Indian tribe to not be treated as "employment" for purposes of subsection 2 of this section.

(2) The director may determine that any Indian tribe that loses coverage under subdivision (1) of this subsection, may have services performed for such tribe again included as "employment" for purposes of subsection 2 of this section if all contributions, payments in lieu of contributions, penalties, surcharges, and interest have been paid.

(3) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days of a final notice of delinquency, the director will immediately notify the United States Internal Revenue Service and the United States Department of Labor.

6. Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(1) Will cause the Indian tribe to be liable for taxes under FUTA;

(2) Will cause the Indian tribe to be excepted from the definition of "employer", as provided in subsection 1 of this section, and services in the employ of the Indian

tribe, as provided in subsection 2 of this section, to be excepted from "employment".

7. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

Section B. Because the state is out of compliance with a federal mandate and such noncompliance may subject the state and employers within the state to forfeiture of millions of dollars of tax credits and grants, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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